A highly appropriated basin is one that does not produce enough water on a yearly or seasonal basis to fulfill the needs of all those having water rights in that basin. Water is vital to almost any activity, thus a basin which cannot meet all the demands being placed on it is a special problem for those individuals within the basin and for those responsible for administering water rights.

A water right is a right of use. Due to the importance of water to any activity in the arid and semi-arid west, certainty in the right of use is extremely important. Lacking certainty, a water right would be of little value to a farmer, an industry or a community. None of these is likely to invest capital or labor in an undertaking without assurances that water will be available in the quantity and quality necessary for that undertaking on a regular basis. A water right should provide that assurance.

The doctrine of prior appropriation dominates western water law in general and is the basis of Montana water law in particular. According to this doctrine "first in time is first in right". Water is distributed from a stream based upon the date of priority of the water right, the oldest rights being satisfied to the limit of their need until the water is gone or all rights are satisfied. One basis for certainty in a water right is the date when that right was established. Those rights established early in time may receive water more regularly. The needs of these junior appropriators are as great as those of the senior water right holders, thus there is a great temptation to take water even in water short years. This affects the rights of senior water right holders by reducing the water available to them, causing losses in crops.

Introductory Statement

A highly appropriated basin is one that does not produce enough water on a yearly or seasonal basis to fulfill the needs of all those having water rights in that basin. Water is vital to almost any activity, thus a basin which cannot meet all the demands being placed on it is a special problem for those individuals within the basin and for those responsible for administering water rights.

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To better understand the problems summarized briefly above, and the potential solutions to those problems, we must explore how the Water Resources Division currently administers the Water Rights program.

II. How We Operate

Prior to 1973 Montana Water law did not require centralized administration and recordation of water rights. A water right could be established by diverting and putting the water to beneficial use called a use right or by posting notice, filing at the Clerk & Recorders Office, then diverting the water and putting it to beneficial use called a filed right.

Since July 1, 1973 the Water Rights Bureau of DNRC has been responsible for the centralized recordation and administration of water rights issued since 1973. Section 85-2-311 of the Montana Code Annotated states "The department shall issue a permit (to appropriate water) if:

1. There are unappropriated waters in the source of supply

    a. at times when the water can be put to the use proposed by the applicant;
    b. in the amount the applicant seeks to appropriate; and
    c. throughout the period during which the applicant seeks to appropriate, the amount requested is available;

2. the rights of prior appropriator will not be adversely affected;
3. the proposed means of diversion or construction are adequate;
4. the proposed use of water is a beneficial use;
5. the proposed use will not interfere unreasonably with other planned

uses or developments for which a permit has been issued or for which water has been reserved;

6. an applicant for an appropriation of 10,000 acre-feet a year or more or 15 cubic feet per second or more proves by clear and convincing evidence that the rights of prior appropriator will not be adversely affected.

The department must evaluate each application for a permit to appropriate water in light of these 'criteria of issuance'. Objections to an application may be made by any water right holder feeling that the proposed appropriation would adversely affect him. The objection must contain "facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections . . . he considers pertinent."

If the department determines that an objection to an application states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection. Generally the objector and individual seeking the permit are represented by legal counsel at the public hearing. Each attempts to demonstrate that water is available or not available for appropriation without adversely affecting existing appropriations. Due to the general lack of indentified and quantified water rights and streamflow information, most of the information presented at such hearings is heresay. Consequently it is unusual for a permit to appropriate water to be denied based upon the results of a hearing of objections to the permit.

When issuing a permit to appropriate water the department may attach such terms, conditions, restrictions and limitations it considers necessary

to protect the rights of other appropriators, and it may issue temporary or seasonal permits. The Department often uses the concerns raised and information presented in a hearing on objections to an application to condition the permit. Conditions can take a number of different forms, the amount of water requested may be reduced. The appropriator may be allowed to divert only during certain times or he may be required to check to be sure water is available before diverting. . .

Any permit issued is subject to existing rights and any final determination of those rights. This is important because most permits are issued without much knowledge of existing rights. Once the existing rights are identified and quantified in an adjudication proceedings, the Provisional permits issued since 1973 will be reviewed and may be modified or reduced where necessary to protect existing (pre-1973) water rights.

III. Highly Appropriated Basins

As stated earlier, a highly appropriated basin is one that does not produce enough water on a yearly or seasonal basis to meet the needs of all those having water rights in that basin. This section will examine how the process which was designed to protect existing rights requires enforcement and water available studies.

The opportunity to object to appliations for permits to appropriate water was placed in the law to help protect existing water right holders from new uses of water which may adversely affect them. Most objectors retain a lawyer to represent them in hearings dealing with their objections. This is an expense to the objector that can become burdensome. As noted

above, it is rare that an objection results in a permit being denied, it is more likely to be issued with certain conditions. It is likely that as long as permits are issued for water from a particular source, further applications will follow. The holders of existing rights must object to and retain legal help for each succeeding application.

In addition to being a financial burden, the issuance of permits, even those appropriately conditioned by the Department, become a license to steal water. This is not a fault of the law which attempts to protect existing rights, but rather is a result of the practicality of the situation. Once a permit is obtained, a certain amount of work and capital must be invested to put the water to use. Whether it is a dam to store spring flows, a sprinkler irrigation system to distribute the water or a ditch system, an investment is made. The investor should consider the frequency of water available for his use as that will affect his ability to make payments. Sometimes, however, the water must be put to use on a continual basis to pay off the initial investment. It is clear that there will be a strong temptation then to ignore the conditions placed upon a permit. This is especially true since the Department has very limited enforcement capability.

IV. Enforcement of Water Rights including Provisional Permits

As you can see the problems on highly appropriated streams is not the permit system itself as without the permit system there would be still new appropriations on these basins. The problem is the enforcement of the order at which water rights including permits are to be exercised. At present, the avenue for enforcement may take several avenues.

In Montana enforcement of decreed water rights, stored water and Permits can be provided by a district court provided:

1) a water commissioner is requested by 15% of the decreed water rights holders affected by a district court decree (adjudication) of a water source or

2) when the owner of stored waters petitions the district court to have such stored waters distributed by court appointed water commissioners.

Enforcement is the responsiblity of the department for the Provisional Permit it issues. Section 85-2-314 of the Montana Code Annotated provides that "If work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof, or if the water is not being applied to the beneficial use contemplated in the permit, or if the permit is otherwise not being followed, the Department may, after notice, require the permittee to show cause why the permit should not be revoked. If the permittee fails . . . the department may revoke the permit.

In a few instances, the Division has enforced the conditions of a permit. A few conditioned permits have been revoked. This has proven to be a good educational tool, informing people that the conditions do mean something and will be enforced. Given existing manpower, the Division is not in a position to undertake a large or even small scale enforcement program.

The stored water uses, decreed water rights, or permittees whose rights are being adversely affected by non-stored or non-decreed water

rights can only seek relief from the district court either through injunctive relief as an immediate remedy or relief through a trial before judge and/or jury. After the general adjudication initiated by Senate Bill 76 passed by the 1979 legislature is completed, then all water rights will be decreed and relief would be sought by requesting a water commissioner.

V. Enforcement of Water Rights in Other States

In a number of western states (Colorado, Idaho, Nebraska, Oregon, Utah, and Wyoming) enforcement is an integral part of water rights administration. Each of these states is divided into a number of districts each of which is administered by a water master. Among the duties of the water master is distribution of water from the streams according to the date of appropriation of the various water rights. In some cases such as Wyoming, Utah, Oregon and Colorado, the water master is hired and employed by the state. In Idaho the water master is a state employee but he is elected to his office by the water users in the district. In all of the states the water master divides only the waters of those streams where his assistance is requested by the water users. In most cases the various water users live together harmoniously, the mere presence of the water master is sufficent deterrent to theft. However, some streams require impartial division of the water each year and a drought year can require the water master to work most of the streams in the district. The water master has the authority to hire additional help as

needed to administer the waters within his district. In drought years he may require a good deal of help. Water masters generally are retained only during the irrigation season, during most years they are able to take care of the duties with minimal staff. As a result these enforcement programs, which are paid for by the water users, are less expensive than they might appear at first blush.

An essential part of an enforcement program is a good record of existing water rights. Most of the states discussed have had a system of permitting water rights since or prior to statehood. It is these dated permits that form the basis of the enforcement program. Montana has had a permit program only since 1973. Thus the basis for an enforcement program simply does not exist in Montana. The final adjudication of water rights in the state, this is the end product of Senate Bill 76, will provide the necessary information on which to develop an enforcement program. When that adjudication process will be complete is uncertain yet.

VI. Some Enforcement Options in Montana

A. Education Influence Program

An education, information and influence program could attempt to discourage applications that are available only on a limited basis. Such a program could include:

1) Water availability studies could be conducted, written in understandable English and distributed widely through conservation districts, irrigation project offices, and other local organizations.

2) Local newspapers could use the studies to write articles discussing water availability, the problems people are having obtaining permits because of the lack of water, the problems irrigators are having due to water theft and other issues related to water availability.

3) The presence of a water commissioner on a stream would serve notice to potential appropriators that water was limited. If a storage project in involved, the Division could ask the owner of the project to petition the district court to provide a water commissioner to distribute the waters. This is one type of influence which the Division could utilize to discourage further applications.

4) The Division assembles a file of water permits hearing decisions by basin and water use. This file is distributed to field DNRC water right field offices. When a person comes in to file an application for a permit, the local field manager looks at the file to see how similar applications have fared. The past objections and conditions are discussed with the applicant.

5) As long as it is generally known that the state has very little enforcement capability, there is no good reason for an appropriator to comply with the conditions of his permit. By judiciously enforcing a few conditional permits within a highly appropriated basin, a disproportionately large amount of compliance may be achieved.

B. Objecting to Applications

Although not an enforcement option directly, the considerations here would reduce the need for enforcement by reducing the number of permits issued that would require additional enforcement.

As discussed earlier, the senior water right holder in a highly appropriated basin is often forced to object to new applications to protect his right. This can become an expensive and worrisome responsibility that some feel should not be shouldered by the senior appropriator.

1) It has been suggested that a remedy to this situation could be to place some burden of proof in a hearing on an application for a new permit with the applicant. That is, require the applicant to prove by a preponderance of evidence that water is available in the amount and during the time requested. It has been suggested that the regulations be clarified to place the burden of such proof with the applicant. A recent memorandum prepared by the DNRC

legal staff indicates that, based upon Montana case law, the burden has always rested with the applicant and that the legislature did not intend to change the burden when it granted the Department jursidiction over issuance of new water use permits. Some rules may be necessary to clarify this. Placing the burden of proof on the applicant would relieve a portion of the senior appropriators expense in supporting his objection. Quoting from the afore mentioned memorandum: "The proponent of a fact bears the inital burden of offering even a scintilla of evidence to prove the existence of the fact. Once evidence of the fact has been introduced, the burden of going forward with the evidence shifts to the opponent. The burden of coming forward with factual evidence shift between the parties several times during the hearing as each attempts to establish facts and refute the others evidence".

2) Another possible mechanism for relieving the objector of this burden would be to place it with the State. The Water Resources Division will be preparing general water availability studies for most basins throughout Montana. These studies could be the basis for the Division to inform an applicant of the degree of water availability in that basin. There are some obvious problems with this approach: (a) it would require a clarification of the burden by law or administrative rule; (b) it would require an expense to the State in the gathering of data and analysis.

C. Closing a Basin

There is precedent in Montana Water Law for controlling a basin. The Board of Natural Resources is empowered to establish controlled groundwater areas providing certain procedures are followed and criteria are met. The administrative procedures would be highly relevant should the legislature consider giving the board the power to control or close surface water drainages. Those procedures are reviewed briefly. "Designation or modification of an area of controlled groundwater use may be proposed to the board by the Department on its own motion or by petition signed by at least twenty, or one-fourth of the users (whichever is the lesser number) of groundwater in a groundwater area wherein there are alleged to be facts showing:

a) that groundwater withdrawals are in excess of recharge to the aquifer or aquifers within such groundwater area;

b) that excessive groundwater withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the groundwater area;

c) that significant disputes regarding priority of rights, amounts of groundwater use by appropriators, or priority of type of use are in progress within the groundwater area; area; or

d) that groundwater levels or pressures in the area in question are declining or have declined excessively."

The first three above (a, b, and c) could all be easily reworded to describe the situation in a surface water drainage.

The Board of Natural Resources must publish notice of and hold a hearing on the proposal. The hearing is to be held as near as practical to the proposed groundwater area. At the hearing, the board shall hear all evidence relevant to the proposal presented by the Department and any other interested party.

After the hearing, the board shall make written findings and an order. The board shall declare the area a controlled groundwater area if evidence presented at the hearing indicates that certain criteria have been met. The order declaring a controlled groundwater area shall also include corrective control provisions. If this approach were adopted for surface water basins such provisions could include any of the options discussed above plus other more restrictive measures such as closing the basin to further appropriations. If the board finds that sufficient facts are not available to designate a controlled groundwater area, the board may designate the area in question to be a temporary controlled groundwater area for a period not to exceed two years. Such order may include the same corrective control provisions mentioned above. During the two-year time period, the Department shall conduct studies necessary to obtain the facts needed to assist in the decision to designate the area a controlled groundwater area.

Closure of a basin to further appropriation can take a number of forms. The basin may be closed only during certain

times of the year, or it could be closed only to certain uses, remaining open to further appropriation for uses such as domestic water, stock watering or non-consumptive uses. In some instances, basins have been closed except during spring runoff if the appropriator provides means to store the flood waters for later use.

Giving the board the power to declare controlled surface water areas would be the most comprehensive of the ideas outlined here. It would also be the most powerful available to the State in administering highly appropriated basins.

VII. Controlling Appropriations in Highly Appropriated Basins in Other States

California, Idaho, Nebraska, New Mexico, Oregon, Utah, and Washington have all closed basins to further appropriations to protect the rights of existing water users. The most common way of closing basins is by administrative decision, the legal authority is found in clauses such as the following from the water laws of Utah: (The State Engineer) " . . . shall have general administrative supervision of the waters of the state, and of the measurement, appropriations, apportionment and distribution thereof. He shall have power to make and publish such rules and regulations as may be necessary from time to time to carry out the duties of his office." In some cases, the decision is made to formally close the basin while in others the Department will simply deny all further applications. In some cases, basins have been closed by the state legislature.

In all cases, a water availability study of some type was conducted

prior to closing the basin. The State of Idaho calculated that reservoirs in the Boise River Drainage did not fill 40% of the time before deciding to close the basin. Lodgepole Creek in southwestern Nebraska was closed to further appropriation when streamflow gages showed that wells were virtually drying the stream up. California and Oregon maintain a large number of stream gages. If flows appear to be critically low, a water availability study is undertaken to determine if the basin should be closed.

It is interesting to note that some states have closed basins for reasons other than the basin being highly appropriated. Oregon closed a number of streams tributary to the Columbia River because they form water falls observable from the Columbia River Highway. Both Oregon and Washington have closed basins to maintain instream flows "to perpetuate the recreational and scenic resources of Oregon". California has closed basins in the interest of navigation and to prevent salt water intrusion.

VIII. Specific Basin Proposals

It may be useful at this juncture to briefly look at a few highly appropriated basins within the state and consider what steps the Division could take in each of them.

UPPER MISSOURI

(FROM: Resolution of Objection to Applications for Permits to Appropriate Water Above Canyon Ferry. Ronald Thompson, Hydrologist, Department of Natural Resources & Conservation)

"As of October 3, 1979, DNRC action on approximately twelve applications for permits to appropriate water in the Upper Missouri River above Canyon Ferry Reservoir had been deferred pending the resolution of objections submitted by senior appropriators. The major objectors involved are the Montana Power Company (MPC) and the Water and Power Resources Service (WPRS), formerly the Bureau of Reclamation.

Presently, MPC operates seven hydroelectric and/or storage reservoirs on the mainstem of the Missouri River below Canyon Ferry Reservoir. The objections by MPC to the applications state that after July 15 no unappropriated water exists above Canyon Ferry Reservoir and that additional appropriations would infringe on their existing downstream rights.

The formal objections of WPRS are similar to those of MPC and relate to their operation of the Canyon Ferry facilities. While MPC utilizes their plants strictly for electrical production, WPRS operates Canyon Ferry for multiple uses. These uses include flood control, electrical production, and irrigation, as mandated in the construction authorizations for the Canyon Ferry Unit. In their objections to the new applications under consideration, WPRS contends that additional appropriations of water above Canyon Ferry Reservoir would deleteriously affect their usage for both irrigation and electrical production.

The analyses conducted for this report confirm evidence and testimony presented in previous analyses, i.e., during certain months of some years, water excess to the needs of MPC and WPRS is available for appropriation; however, in other years, there is no excess water. Regardless of whether Canyon Ferry Reservoir or Cochrane Hydroelectric Plant spills are used as the basis for determining water availability, the period during which that availability is sometimes available is restricted to the months of April

to July, inclusively. The evaluation of operations at Canyon Ferry Reservoir since 1966 indicates the following statistics on monthly water availability: during April an average of about 64,000 acre-feet, 7 years out of 13; during May, an average of about 120,000 acre-feet, 7 years out of 13; during June an average of about 191,000 acre-feet, 10 years out of 13; and during July, an average of about 138,000 acre-feet, 10 years out of 13."

The Division could pursue a couple of options in the Upper Missouri. The most obvious would be to write a statement of water availability in understandable English and distribute it widely throughout the basin through conservation districts, DNRC Water Rights Bureau field offices, and local organizations. Local newspapers could carry articles based upon the water availability study.

An effort could be made to enforce the conditions placed on a few permits to appropriate to let people know that the Division intends to see that those conditions are followed to protect existing water rights.

WPRS has approximately 200,000 acre feet per year in Canyon Ferry that is available for sale for irrigation. The Division could purchase this water and sell it on contract to upstream irrigators, or WPRS could do this directly themselves.

Currently, irrigators see no reason to pruchase this water since they can receive a permit from the Division to appropriate water during certain time periods. They continue to divert water beyond those times, effectively stealing water from WPRS, because the Division cannot aggressively enforce the conditions of the permit. Utilizing the selective enforcement and education and information program, it may be possible to induce irrigators to apply for permits to appropriate during those times when water is

available and to purchase contracts for water for the remainder of the irrigation season.

MILK RIVER DRAINAGE

Unlike the Upper Missouri River, the Milk is over-appropriated by consumptive uses of water--specifically irrigated agriculture. Three sources of information indicate that the drainage is over-appropriated. A DNRC report titled, "Supplemental Water for the Milk River", indicates that the average annual water shortage for irrigated lands from 1964-1973 was 38,000 acre-feet. Another indication of over-appropriation is the volley of objections from water right holders to each new application for a water right from the Milk. In the past few years, these objections have led to a number of hearings to determine whether the permit should be issued. Due to the legal fees and time involved, it is doubtful that holders of existing water rights would object to applications unless they felt that the new right would adversely affect them.

The third indication is that irrigators in the Glasgow Division which purchase water for irrigation by contract with WPRS from Fresno Reservoir feel that upstream irrigators are using the water released from Fresno before it reaches the Glasgow Division.

Additional shortages of water may be experienced if the Canadians exercise their full share of water allocations and may be shorter still depending on the Indian Reservations water rights.

An education and information program could be undertaken in the

Milk River Drainage. Newspaper articles could describe the hearing process necessary to obtain a permit; the fact that DNRC and WPRS have jointly conducted studies of providing supplemental water to the Milk because of limited water availability; and the problems Glasgow Division irrigators are having with water theft. The results of water availability studies conducted in the Milk could be widely distributed.

WPRS could petition the district court for a water commissioner on the Milk as they are owners of the Fresno Reservoir. The presence of a water commissioner may reduce water theft as well as making it very clear that water availability is limited within the drainage.

The Division could selectively enforce conditioned permits within the drainage.

The Division could pursue legislation that would allow the board to close surface water drainages to further appropriations. This option could then be pursued in the Milk.

CLARK FORK

Recently, the Division conducted a limited investigation of water availability in the Clark Fork in preparation for an application to reserve waters which is being prepared by the Department of Fish, Wildlife and Parks. This preliminary investigation indicated that the Washington Water Power right at Noxon Rapids severly limits water availability in the Blackfoot, Bitterroot and Flathead as well as the Clark Fork. It appears that water is available in limited quantities from May 10 - June 25. A more detailed water availability study should be conducted. The results

of such a study should receive wide distribution throughout western Montana.

Selective enforcement of conditioned permits might prove helpful.

The Department may want to propose closing the Clark Fork Basins to further appropriations to the Board should the legislature give the Board that authority.

The measures described could help in administering water rights in a highly appropriated basin but are substitutes for an enforcement program. They could be the beginning of a water plan for each of these basins. Clearly, the management options chosen must vary from basin to basin depending upon the problems and opportunities within a particular drainage.

The scope of this paper does not allow a discussion of some of the other major issues in highly appropriated basins such as dewatering and transferability of water rights. We have confined this paper to those issues directly related to certainty in water rights and enforcement.

IX. How Some Other State Administer Water Rights.

Suffice it to say for now that in order to deal with these other issues, the completed basin water plan might be similar in scope to those prepared by the State of Washington, which address:

1) potential water resource projects;

2) preferences or priorities of use by categories;

3) recommend streams closed to future appropriation;

4) recommend flows on perennial streams in amounts necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values;

5) recommend quantities for beneficial uses;

6) enforcement, accelerated adjudication of existing water rights.

Appropriation Procedure - Washington

Appropriation Procedure - An application for permit to appropriate water must be submitted to the Department of Ecology. It shall contain:

1) source of water supply;

2) nature and amount of proposed use;

3) time during which water well will be used;

If for agricultural purposes:

a) legal description of land to be irrigated;

b) amount of water in acre feet.

If for power purposes:

a) nature of works by means of which the power will be developed;

b) the head and amount of water to be utilized;

c) uses to which power will be applied.

If for construction of a reservoir:

a) it shall give the height of the dam;

b) the capacity of the reservoir;

c) uses to be made of impounded water.

If for municipal water supply:

a) give the present population to be served;

b) the future requirements for the municipality.

If for mining:

a) the nature of the mines to be served;

b) method of supplying and utilizing the water;

c) location by legal description.

Upon receipt of a proper application, the Department shall instruct the applicant to publish notice thereof in a newspaper of general circulation published in the county in which the storage, diversion, and use is to be made.

The Department shall investigate the application and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the Department may issue a preliminary permit, for a period not to exceed three years, requiring the applicant to make such surveys, investigations, studies and progress reports, as the Department may deem necessary.

If the applicant fails to comply with the conditions of the preliminary permit, it and the application on which it is based shall be automatically canceled.

The Department shall make and file written findings of fact concerning all things investigated, and if it shall find that water is available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, he shall issue a permit. But, where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be the duty of the Department to reject such application.

Adjudication Prccedure - Washington

An adjudication can be initiated by one or more persons claiming the right to divert any waters within the state or by the Department when it appears such adjudication would be in the public interest.

The Department must prepare a statement of facts together with a map of the locality under investigation, and file such statement in the superior court of the county in which the water is located. Such report shall contain:

1) the names of all known persons claiming the right to divert said water;
2) a brief statement of facts in relation to such water.

The superior court shall issue summons in the name of the State as plaintiff against all known persons claiming the right to divert the water involved, and also all persons unknown claiming the right to divert the water involved.

Each defendent shall file a statement containing information necessary to determine the extent of their right. The court shall refer the proceeding to the Department to take testimony and file a transcript of said testimony with the court. Upon completion of taking testimony, the Department shall file a full and complete report with the court which shall set a time and date for a hearing on the report.

The court shall make a decree based upon said report any any filed exceptions thereto.

Utah - Appropriate Procedure

Appropriation Procedure - An application for a permit to appropriate water must be submitted to the state engineer. It shall contain:

1) nature of the proposed use;
2) quantity of water;
3) time during which it is to be used each year;
4) name of the stream or source from which it is to be diverted;
5) nature and location of diversion works;

If for irrigation purposes:

a) legal description of land to be irrigated;

b) total acreage and character of soil.

If for developing power:

a) size and kind of water wheels and head under which wheels will be operated;

b) the amount of power to be produced and purposes for which it will be used;

c) the point where the water is to be returned to the stream.

If for milling or mining:

a) name, location and nature of the mine or mill;

b) the point where the water is to be returned to the stream.

When an application is filed in compliance with the above, the state engineer shall publish in a newspaper published within the county of the water source from which the appropriation is to be made a notice of the application. The notice shall apprise the public of the contents of the application and the proposed plan of development.

Any person interested may file with the state engineer a written protest against the granting of the application.

It shall be the duty of the state engineers to approve an application if: (1) There is unappropriated water in the proposed source; (2) The proposed use will not impair existing rights, or interfere with the more beneficial use of the water; (3) The proposed plan is physically and economically feasible and would not prove detrimental to the public welfare; and (4) The applicant has the

financial ability to complete the proposed works and the application was filed in good faith and not for purposes of speculation.

Adjudication Procedure - Utah

Essentially the same as Washington.